IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 955 of 1983
with
CROSS OBJECTIONS

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

URMILABEN ARVINDKUMAR
Versus
BHIKHABHAI RANCHHODBHAI

Appearance:
MR MTM HAKIM for appellants
NOTICE SERVED for Respondent No. 1
MS MAYA DESAI for MR MD PANDYA for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 06/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.M.KAPADIA)

1. Appellants challenge the judgment and award dated July 30, 1982, rendered in Motor Accident Claim Petition No. 452 of 1981 by the Motor Accident Claims Tribunal (Main), Vadodara, by which the appellants were awarded compensation of Rs.75,500/- with proportionate cost and interest at the rate of 6% per annum from the date of the application till realisation on the ground that the amount of compensation determined as payable under the award was inadequate and on lower side.

2. Respondents have filed cross-objections challenging the award on the ground that the finding recorded by the Tribunal in regard to negligence attributed on the part of the S.T. bus driver was erroneous and also the amount of compensation awarded to the claimants was excessive and on higher side.

3. On March 13, 1981, Arvindkumar Parshottamdas Patel by riding his bicycle was proceeding towards Kansara Pole. When he reached near Lal Court, the driver of the S.T. bus bearing No. G.T.E. 6244 with its trailer bearing No. G.T.D. 6722 came from Padra side driving it in a rash and negligent manner and dashed with the deceased as a result of which the deceased was thrown off the bicycle and sustained serious injuries and died on the spot.

4. The claimants who are the heirs and legal representatives of the deceased had claimed total compensation of Rs. 2,00,000/-, inter alia, alleging that the accident had taken place because of rash and negligent act of driving on the part of the diver of the S.T. Corporation. Putting forth the case of the compensation it was, inter alia, averred by the claimants that the deceased was a farmer and he was cultivating his own land and was earning Rs.50,000/- per annum from the agricultural operations. As the deceased was an Arts Graduate, he was cultivating the land by adopting progressive method of agriculture. After the untimely death of the deceased there was nobody in the family of the claimants who could look after the agricultural operations and, therefore, the claimants were compelled to get the land cultivated through others. On the aforesaid premises, the claimants claimed compensation from the respondents to which reference is made earlier.

5. The petition was contested by the S.T. Corporation by filing its written statement at Ex.14, inter alia, denying the rashness and negligence on the part of its driver. It not only denied the particulars

of the accident narrated in the petition but also tried to justify the act of the driver of the bus who was driving the bus which was attached with trailer at the relevant time by contending that the driver was not negligent in driving the bus. So far as the quantum of compensation is concerned, it was denied by the S.T. Corporation that the deceased was the only member in the family who was looking after agricultural operations and was earning Rs.50,000/- per annum from agricultural operations. It was pleaded that the actual income was not affected on the demise of the deceased and, therefore, the claimants had not suffered any financial loss of income as alleged by them and it was prayed for dismissal of the petition.

6. The Tribunal held that the accident was the result of the rash and negligent act of the driver of the S.T. bus and, therefore, the S.T. Corporation being the owner of the offending vehicle was vicariously liable. The Tribunal thereafter determined the compensation payable to the claimants and on the basis of the evidence, determined the datum figure at Rs.600/- per month and thereafter deducted the amount for the personal upkeep of the deceased on the basis of the unit formula and the net dependency benefit available to the deceased was worked out at Rs.4700/- per annum and then applied 15 purchase factor and worked out the amount of total compensation to the tune of Rs.70,500/- to which added the global amount of Rs.5000/- under the head of loss of expectation of life and awarded total compensation of Rs.75,500/- with interest and costs thereon.

7. Mr. Hakim, learned advocate for the appellants/claimants contended that the Tribunal has considered the income of the deceased on a very lower side and then deducted the amount for personal upkeep of the deceased twice. What was stressed by the learned advocate was that the deceased was a B.A. Graduate and he owned 35 Bighas of agricultural land of his own and was cultivating 28 bighas of land of his father and, therefore, the Tribunal ought to have considered the loss of income of the deceased on the basis of the managerial or supervisory capacity and ought to have appreciated that it was not impossible for a person who was owning 35 bighas of land to earn at least Rs.2000/- per month. Therefore, according to the learned advocate for the appellants, on the basis of the aforesaid aspects, the Tribunal ought to have considered the income of the deceased at Rs.2000/per month and awarded compensation accordingly.

8. Ms. Desai, learned counsel for the respondent No.2 - S.T. Corporation, contended that it is settled principle of law that special damages are required to be pleaded and proved and must be supported by the evidence on record but in the instant case there was no evidence worth consideration about the income of the deceased. There was no evidence as to what was the loss caused to the claimants on account of the untimely demise of Arvindkumar. Therefore, in the absence of any evidence, according to her, the Tribunal has rightly assessed the income of the deceased at Rs.450/- per month in his supervisory capacity in the agricultural operations and also rightly assessed Rs.150/- per month by way of loss of income as the claimants had to engage agricultural labourer at the rate of Rs.5/- per day. What was emphasised by the learned counsel was that the learned Tribunal has rightly deducted the amount for personal upkeep twice because personal upkeep and pocket expenses are two different things. It is emphatically contended that the Tribunal has rightly assessed the dependency benefit available to the claimants and awarded a just and proper amount of compensation and hence no interference in the impugned award is required and prayed that the appeal may be dismissed.

9. So far as the accident is concerned, it does not require any more proof to prove the rashness and negligence on the part of the driver of the S.T. bus who was driving the offending vehicle attached with trailer in a thickly populated locality. The driver of the S.T. bus dashed the bus against the bicycle as a result of which the deceased who was riding the bicycle was thrown off the bicycle and succumbed to the injuries sustained by him in this vehicular accident. Ms. Desai has, therefore, rightly not challenged the finding recorded by the Tribunal with regard to the negligence attributed to the driver of the S.T. bus.

10. The only question which falls for determination in this appeal is about the quantification of the compensation. It is well settled principle and proposition of law that the Tribunal has to award just compensation which should not be a source of profit to the victim of the road accident or dependents of the deceased or punitive to the person liable. When we talk of just compensation, we talk of compensation which the Tribunal thinks is fair, equitable, reasonable and morally right, that is, in consonance with the public policy. No matter if it is a personal injury case or a case arising out of the fatal accident, some guess work from the available material can be done and is

permissible but it must be remembered that in such cases, arithmetic may be a good servant but would be a bad master. In this connection, a reference may be made to the judgment rendered by the Bombay High Court in the case of Maharashtra State Road Transport Corporation v. Rajarani, 81 B.L.R. 241, wherein the Bombay High Court has observed that the standard must be an objective standard and although it may involve some guess work, hypothetical considerations, speculations and conjuncture and mere consideration of sympathy and solatium should not enter into assessment of damages, appear to be relevant principles applicable to personal injuries. In the case of C.K. Subramonia Iyer v. Kunhi Kuttan Nair, 1970 ACJ 110 (SC) the Supreme Court has held that in assessing damages, the court must exclude all considerations of matter which rest in speculation or fancy though conjuncture to some extent is inevitable. In the case of Concord of India Insurance Co. Ltd. v. Nirmala Devi, 1980 ACJ 55 (SC) the Supreme Court has observed that the determination of the quantum must be liberal not niggardly since the law values life and limb in the country in generous scales.

11. From the decisions referred to hereinabove, it is clear that the emphasis is on the three fold principles; (i) that the award should be moderate, just and fair and it should not be oppressive to the respondent, (ii) the award should not be punitive, exemplary and extravagant, and (iii) as far as possible similar cases must be decided similarly. The community at large may not carry the grievance of discrimination.

12. Keeping in mind the aforesaid principles enunciated by the Supreme Court, we have to examine as to whether in the present case compensation of Rs.75,500/- awarded to the heirs and legal representatives of the deceased was just, fair, moderate, reasonable and in consonance with the evidence recorded by it or was it on the lower side requiring interference of this Court.

13. Now adverting to the evidence on record, it may be noted that Urmilaben, widow of the deceased, had testified that her husband was a graduate and he was a farmer. He was owning 35 bighas of land and was also cultivating the land which stood in the name of her father-in-law, that is, Parshottamdas Patel and he was taking crops of cotton, juvar and paddy and out of the said crops he was earning Rs.50,000/- per annum. To corroborate the said version, the claimants had also examined Becharbhai Lallubhai Patel and Shantibhai Shivabhai. Becharbhai had testified that he was serving

as the Manager in Mandala Cooperative Ginning Factory where the deceased used to sell his cotton. Shantibhai was examined to establish that the deceased was cultivating cotton and he used to sell cotton to Karmal Farmers' Cooperative Society. To show that the deceased was having 35 bighas of land, extract of panipatrak was also produced.

14. The Tribunal relied upon the judgment of this Court in the case of Gujarat State Road Transport Corporation v. Malubai Menand, 21 GLR 400 and Dahiben v. Chitrabhai Chakabhai, 23 GLR 498. In the said decisions, this court held that in computing the income for the purpose of awarding damages, income of the deceased from the agricultural operations cannot be excluded on the ground that agricultural holding remained intact with the dependents. The extent of holding of a cultivator in the hands of the dependents may be relevant factor while deciding the multiplier of the income from agriculture as earned by the deceased and the income from agricultural holding could not be considered to be relevant. The Tribunal after relying upon the aforesaid reported decisions of this Court has held that the income of the deceased from the agricultural operations will have to be considered for the purpose of arriving at the correct compensation awardable to the claimants. The Tribunal has also held that the net income of the deceased from the agricultural operations was Rs.25,000/- per year, that is, approximately Rs.2,000/- per month. The Tribunal thereafter held that the deceased was the owner-cum-manager. Therefore, the services of the deceased shall have to be evaluated as the owner and the manager of his own land and the land of his father. The Tribunal further held that even an ordinary labourer could earn Rs.10/- per day as labour charges in those days and since the deceased was the owner and the manager of the land and he himself was supervising the agricultural operations, the services of the deceased could be assessed at Rs.15/- per day, that is, Rs.450/per month. The Tribunal thereafter considered the charges paid to the labourer by the claimants for cultivating the land of the deceased on account of his untimely demise at Rs.5/- per day, that is, Rs.150/- per month, and clubbed both the amounts at Rs.600/- per month. We fail to understand when there was ample evidence on record to show that the deceased was a graduate and was cultivating 35 bighas of his own land and was also cultivating 28 bighas of land of his father on what basis the income of the deceased in his supervisory capacity was assessed only at Rs.15/- per day. Accordingly to us, this calculation of the Tribunal is most unrealistic and on

the extreme lower side certainly requiring interference in the assessment of income of the deceased and compensation awarded to the claimants.

15. In the case of Rukmani Devi and others v. Om Prakash and others, 1991 ACJ 3, the deceased was doing business in partnership which was continued by the family members after his death. In that case the Supreme Court has held that the family members of the deceased do suffer loss on account of the untimely demise of the deceased. We can take a judicial notice that the mishap had taken place in the year 1981 and it was not impossible even for an average farmer to earn about Rs.1500/per month in those days. Therefore, we assess the income of the deceased at Rs.1500/- per month without considering other aspects as to whether the claimants had engaged labourer to cultivate the said land or not.

16. We are also unable to persuade ourselves that the personal upkeep and pocket expenses are two different things as held by the Tribunal. In the instant case, the Tribunal has deducted twice the amount arrived at by it for personal upkeep and pocket expenses of the deceased, which, according to us, is improper.

17. The Supreme Court in catena of decisions has held that while assessing the income of the deceased without considering the unit formula if 1/3 amount is straight way deducted for the personal upkeep of the deceased and considering the hazardous and imponderables of life, it would be the net dependency benefit that can be properly assessed and the same would meet the ends of justice.

18. In the instant case, we have assessed the income of the deceased at Rs. 1500/- per month in his supervisory capacity or the income from agricultural operations and after deducting 1/3 amount, that is, Rs.500/- from Rs.1500/- for personal upkeep of the deceased, the monthly dependency benefit available to he claimants would be Rs.1000/- Thus, the annual dependency benefit available to the claimants would be Rs.12,000/Looking to the age of the deceased and in view of the judgment of the Supreme Court in the case of General Manager, Kerala State Road Transport Corporation v. Susamma Thomas, 1994 ACJ 1, 15 multiplier would be the correct purchase factor to determine the dependency benefit available to the claimants. In doing so, the figure worked out would be Rs.1,80,000/- (Rs.12,000 x 15 = Rs.1,80,000/-). To this the conventional amount of Rs.5,000/- must be added and thus the claimants are entitled to a total compensation of Rs.1,85,000/- on

account of the untimely demise of Arvindkumar. The Tribunal has awarded Rs.75,500/- and the claimants have restricted their claim in this appeal to the tune of Rs.74,500/-. Therefore, now the claimants are entitled to an additional amount of Rs.74,500/- by way of compensation.

19. For the foregoing reasons, the appeal is allowed with costs. The Cross-objections are dismissed. The appellants/ claimants are entitled to recover an additional amount of Rs.74,500/- from the respondents/opponents as compensation with proportionate costs and interest at the rate of 6% per annum from the date of the petition till realisation.

(R.K. Abichandani, J.)

6.2.2001. (A.M. Kapadia, J.)

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